IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9452 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAMBHAI @ DAS SHAMBHUBHAI PATEL THROUGH SON

Versus

COMMISSIONER OF POLICE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu by filing this writ petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order of detention dated 23.5.2000 passed by the respondent no. 1 in respect of petitioner-detenu in exercise of powers

conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of the grounds of detention, it is the case of the detaining authority that the detenu is a 'dangerous person' within the meaning of sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on only one criminal case lodged in Gaekwad Haweli Police Station for the offence punishable under sec. 420, 465, 460, 470, 471, 409 and 114 of IPC. As per the papers that case is pending with the Investigiating Officer at the stage of investigation. The detaining authority has also placed reliance on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, such two statements were recorded on 20.5.2000 and 21.5.2000 respectively and both the statements were verified on 22.5.2000 and on the very next day, the order of detention came to be passed by the detaining authority and that order has been challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to the main petition, controverting the grounds of attack mentioned in the memo of petition.

4. Mr Rakesh Sharma learned advocate for the petitioner has argued that looking to the dates of statements and date of verification of statements and date of order of detention and looking to the bulk of papers, it is not possible for detaining authority to apply his mind for arriving at a subjective satisfaction for passing an order of detention. He has placed reliance on the decision of Kalidas Chandubhai Kahar vs. State of Gujarat and Ors. reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. Looking to the respective dates and bulk of the papers, it is not possible for the detaining authority to apply his mind within a day and, therefore, prima-facie this order is bad in law and illegal and the same is required to be quashed and set aside.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 23.5.2000 passed by respondent no. 1 in respect of

detenu is quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule is made absolute. Direct service permitted.

(H.H.MEHTA, J.)

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